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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

Contents

		Page
I.	General	3
II.	Constitutional, legal and political issues	3
III.	Budget	4
IV.	Economic conditions	5
	A. General	5
	B. Trade	5
	C. Banking and financial services	5
	D. Transportation, communications and utilities	6
	E. Tourism	6
V.	Social conditions	7
	A. Labour	7
	B. Human rights	7
	C. Social security and welfare	7
	D. Public health	7
	E. Education	7
	F. Crime and public safety	8
VI.	Forum for Dialogue on Gibraltar	8

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VII. Future status of the Territory 9
A. Position of the administering Power 9
B. Position of the territorial Government 10
C. Position of the Government of Spain 10
D. United Kingdom-Spain negotiations 11
E. United Kingdom-Gibraltar discussions 11
VIII. Consideration by the United Nations 11
A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples 11
B. Special Political and Decolonization Committee (Fourth Committee) 11
C. Action by the General Assembly 12

I. General

1. Gibraltar is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus approximately 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 square kilometres; according to Spain, which claims sovereignty over the Territory, it is 4.8 square kilometres. Issues relating to the water off Gibraltar continue to be a subject of contention.

2. According to the administering Power, in 2009 the population in the Territory was 29,431. The currency of the Territory is the Gibraltar pound, circulating at par with the pound sterling. The Territory's main trading and commercial transactions are with European countries, the United States of America and North African countries.

3. The basis of the current relationship between the Government of the United Kingdom and its Non-Self-Governing Territories is enshrined in the constitution of each Territory. The British Overseas Territories Act 2002 grants the right of British citizenship to "British Overseas Territory citizens".[1]

II. Constitutional, legal and political issues

4. The Gibraltar Constitution Order 2006 came into force on 2 January 2007. Under the Constitution, the Governor of Gibraltar represents the British Crown in the Territory and is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Police Authority for Gibraltar) and for certain appointments as conferred on him by the Constitution. Following an election, the Governor, acting at his discretion, shall appoint as Chief Minister the elected member of the Parliament who, in his judgement, is most likely to command the greatest measure of confidence of his peers. Other ministers shall be appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament.

5. Gibraltar has a Supreme Court allowing for appeals to a Court of Appeal and thence to Her Majesty in Council, acting on the Privy Council's advice. The 2006 Constitution provides for the establishment of a Judicial Service Commission, which was set up under the Judicial Service Act 2007, Act No. 2007-26. The Commission has executive powers, subject only to an exceptional power of veto by the Governor, to advise the Governor in respect of certain matters, such as the appointments to the offices of the Chief Justice and other members of the judiciary. The Governor, with the prior approval of a Secretary of State, may disregard the advice of the

Note: The information contained in the present paper has been derived from public sources, as well as transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations and from information provided by the Government of Spain and other sources, including those of the territorial Government. Further details are contained in previous working papers posted on the United Nations website www.un.org/Depts/dpi/decolonization/docs.htm.

[1] Information provided by the administering Power, 7 January 2011.

Commission in any case where he judges that compliance with that advice would prejudice the British Crown's service.

6. Under the Gibraltar Constitution, the British Crown retains full power to make laws from time to time for the peace, order and good government of Gibraltar. Included in those powers are laws amending or revoking the Constitution. The Constitution also makes provisions regarding Crown lands in Gibraltar.

7. Furthermore, according to the 2006 Constitution, the Governor shall dissolve Parliament in preparation for the next general election four years from the date of the first meeting of Parliament after any general election, unless Parliament has already been dissolved.

8. The last general elections in Gibraltar were held in October 2007. The incumbent Gibraltar Social Democratic Party obtained 49 per cent of the vote, followed by the Gibraltar Socialist Labour Party with almost 32 per cent and the Liberal Party with over 13 per cent. Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar for a fourth term. Joseph Bossano of the Gibraltar Socialist Labour Party continues as leader of the opposition, which includes the Liberal Party. The next elections are due to be held by the end of October 2011.

9. After a 10-year campaign to exercise the right to vote in European elections, in June 2004 Gibraltarians took part in European parliamentary elections, based on the fact that they were considered by the administering Power to be part of the south-west England region for electoral purposes.

10. The Government of Spain maintains the position that the 2006 Constitution represented a modernization of the Territory's Government that in no way affected the international capacity of Gibraltar; that its adoption was a reform of the colonial regime, which remains unaltered; and that it did not affect in any way the pending decolonization process of Gibraltar, to which the principle of self-determination does not apply.

11. Information on the positions of the administering Power, the territorial Government and the Government of Spain, as well as on the trilateral Forum for Dialogue on Gibraltar, can be found in sections VI and VII of the present document.

III. Budget

12. In his budget speech delivered on 1 July 2010, the Chief Minister gave a positive account of the Territory's public finances. According to information provided by the administering Power, as at 31 March 2010 the territorial Government's revenue was £270 million and its expenditures stood at £190.3 million, with £119 million in approved expenditure on capital projects for 2010/11.

13. The Chief Minister stated that the transition was under way to a new company tax regime with effect from 1 January 2011, when the Territory's tax-exempt company regime came to an end. In order to maintain Government revenue levels, it would be necessary to rebalance Government revenue streams affecting companies, which would possibly involve some increases in commercial rates, commercial electricity tariffs and employer social insurance contributions. The new company tax

regime, which went into effect on 1 January 2011, is applicable to all companies, and ends the Gibraltar tax-exempt company regime.

IV. Economic conditions

A. General

14. Gibraltar has no known natural resources and lacks agricultural land. With the downsizing of the military base since the 1980s, the economy has increasingly become focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management.

15. Prior to 1980, the economy was largely dependent on the United Kingdom Ministry of Defence expenditures. The Gibraltar operating base includes military and civilian personnel. In 2010, the territorial Government expressed concern that the Ministry of Defence, because of its own budgetary problems, had to reduce the amount of work that it outsourced to local construction companies. At the same time, as a result of an agreement reached between the territorial Government and the Ministry of Defence, the base cannot reduce its workforce below an agreed level except by voluntary redundancies. Jobs lost above that level in most Ministry of Defence work areas are absorbed and protected by the territorial Government. In January 2011, the Ministry of Defence appointed a Special Representative to Gibraltar to work on a range of issues connected with the continued presence of the base.

16. In his 2010 budget speech, the Chief Minister stated that Gibraltar's economy had continued to grow and that the number of jobs in the Territory's economy remained at a near record high. In the year ending 31 March 2010, the Territory's gross domestic product (GDP) was estimated to have grown by just over 5 per cent to £914 million. Local tax-paying businesses benefited from a reduction in the company tax rate from 22 per cent to 10 per cent from 1 January 2011 onward. As at October 2010, GDP per capita stood at approximately £29,625.

B. Trade

17. According to the administering Power, the Territory's total imports amounted to approximately £1.7 billion for 2009, the latest available figure. Around 25 per cent of its non-fuel imports originate from the United Kingdom. Other sources of non-fuel imports include Germany, the Netherlands and Spain. The Territory's total exports for 2009 were approximately £1.3 billion. Exports were mainly re-exports of petroleum and petroleum products supplied to shipping.

C. Banking and financial services

18. Gibraltar has a well-developed financial sector, which is regulated by an independent statutory body, the Financial Services Commission. The Gibraltar Finance Centre is charged with the marketing and promotion of financial services. In his 2010 budget statement, the Chief Minister noted that a new era had unfolded within the year for the Territory's finance sector, repositioning it away from a tax haven to a mainstream international finance centre. The territorial Government was

working closely with the industry to ensure that the benefits of the Territory's new finance services become internationally known.

19. Twelve banks operate in Gibraltar, all of which are large multinational operations. A recent review indicated that Gibraltar had substantially implemented the principles of transparency and exchange of information developed by the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organization for Economic Cooperation and Development.

D. Transportation, communications and utilities

20. Road transportation arrangements in and out of Gibraltar were agreed upon at Córdoba and came into force in December 2006. They included the introduction at the fence/frontier of lanes in both directions, and red and green channels for both people and vehicles. Customs and police checks remain necessary, since Gibraltar does not belong to the European Union Customs Union. Moreover, the United Kingdom (and thus Gibraltar) does not belong to the Schengen area for external borders control purposes. In 2010, the territorial Government carried out road and parking projects valued at £66 million.

21. The United Kingdom continues to be responsible for all international obligations relating to aviation safety and security in respect of Gibraltar Airport, a military airfield available for civilian flights, with the Ministry of Defence retaining ownership of and operational responsibility for the military aviation aspects of the airfield. In July 2010, the British (National Air Traffic Services) and Spanish (Aeropuertos Españoles y Navegación Aérea) air control service providers reached an agreement on technical procedures helping to provide safe passage for aircraft using Gibraltar Airport.

22. The Strait of Gibraltar is a principal water route; the Territory's port facilities are used by many long-distance liners and cargo ships. According to the territorial Government's 2010 budget statement, port business had a successful year and improved on all fronts: the quantity of bunkers supplied, the number of vessels arriving, the increase of passenger ferry links and services, and the number of vessels registered on the shipping registry.

E. Tourism

23. According to the territorial Government, in 2009 the tourism industry had a reasonably good year, involving approximately 10.3 million visitors. Overall, the number of visitor arrivals rose, as did the amount of time they spent in Gibraltar. Arrivals in Gibraltar by land comprise mainly day visitors arriving from Spain; arrivals by air are primarily from the United Kingdom; arrivals by sea comprise ferry arrivals from Morocco and day trips from cruise ships.

V. Social conditions

A. Labour

24. According to the territorial Government, employment levels in Gibraltar were sustained in 2009 with an unemployment rate of 3.5 per cent. In October, they stood at 20,450, a slight decrease of 59 from the previous year, but still the second highest figure on record. The decrease in employment in construction, financial services and education was partly offset by an increase in wholesale and retail, transport and communications, health and social work, and online gambling. On 1 January 2011, the Territory's statutory minimum wage rose by 8 per cent from £5 to £5.40 per hour.

B. Human rights

25. As previously reported, the following major international human rights instruments apply in Gibraltar: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. The Territory's 2006 Constitution includes an updated chapter on the fundamental rights and freedoms of the individual. According to the territorial Government, in 2010 a new prison at Lathbury Barracks came into operation, providing Gibraltar with a modern prison facility in which prisoners can be held with dignity and respect, in accordance with human rights standards.

C. Social security and welfare

26. The social security and welfare sectors in Gibraltar continue to be governed by various social security acts, which have been mentioned in previous working papers. According to media reports, old age pensions and widows' benefits were increased by 2.8 per cent with effect from 1 April 2010.

D. Public health

27. The Gibraltar Health Authority, a department of the territorial Government, is responsible for providing health care in the Territory. According to information provided by the administering Power, life expectancy in Gibraltar is approximately 79 years for males and 83 years for females, with an infant mortality rate of 5.7 per 1,000 births.

E. Education

28. Education in Gibraltar, governed by the Education and Training Act of 1974, is free and compulsory for children between the ages of 4 and 15. The language of instruction is English. Public education in Gibraltar comprises 11 primary schools and 2 secondary schools, as well as the Gibraltar College of Further Education and the Vocational Training Centre, serving over 5,200 students. According to the

administering Power, expenditure on education during the year ending on 31 March 2010 was approximately £24.3 million. Students who obtain a place at a university in the United Kingdom are entitled to Gibraltar Government scholarships. According to the territorial Government, university student grants increased by 10 per cent in the academic year 2010/11.

F. Crime and public safety

29. Law enforcement in the Territory continues to be the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority established under the Police Act 2006. In accordance with the Act, the Governor has overall, ultimate responsibility for the integrity, probity and independence of policing in Gibraltar and for the policing aspects of national security, including internal security.

30. The 2009/2010 annual report from the Gibraltar Police Authority indicates that the overall crime figure rose from 3,921 to 4,647 cases in the year under review, an increase of 726 cases. The assessment of the Authority was that this increase had been the result of police-generated enforcement of priorities identified in the policing plan and increases in front-line policing. The overall detection rate rose from approximately 60 to 63 per cent.

VI. Forum for Dialogue on Gibraltar

31. Negotiations between the United Kingdom and Spain on the subject of Gibraltar led in 2004 to the establishment of a Forum for Dialogue on Gibraltar. Since the establishment of the Forum, there have been several rounds of discussions, both before and after the ministerial meeting of the Forum in September 2006, when agreement was reached on a package of issues, known as the Córdoba Statements, and in July 2008, when the three sides endorsed at a second ministerial meeting the broad objectives of future agenda issues encompassing six additional areas of cooperation. Furthermore, at the third ministerial meeting of the Forum held in Gibraltar in July 2009 under the terms of the joint communiqué of 16 December 2004, the participants reconfirmed their commitment to the creation of a constructive atmosphere of mutual confidence and cooperation for the benefit and prosperity of Gibraltar and the whole region, in particular the Campo de Gibraltar, and endorsed the notion that cooperation and mutual trust should become the norm.

32. In January 2010, the participants decided that representatives of the Governments of Gibraltar, Spain and the United Kingdom would meet to take forward talks on the six areas of cooperation and subsequently refer any accomplishments to the Forum. The Forum met at senior official level in Gibraltar on 21 and 22 July 2010. The participants discussed the progress being made by working groups on each of the six areas that were agreed upon in 2008, namely, environmental issues; financial services and taxation; judicial, customs and police cooperation; education; maritime communications and safety; and visa-related issues. At the said meeting, the Forum noted with satisfaction the progress that had been made, and agreed on a timetable to conclude possible agreements by the Ministers at their next meeting. The Forum also agreed to maintain open lines of communications in relation to issues that might arise. The Forum further agreed to

consider ways to establish regular dialogue with environmental non-governmental organizations in Gibraltar and in the Campo.

33. In October 2010, the participants in the Forum decided that technical meetings would be held in five of the aforementioned six areas, namely, visa issues, financial services and tax, maritime communications and safety, environment and education. It was further decided that the issues relating to police, judicial and customs cooperation would be dealt with in political level meetings, with the aim of analysing possible formulas that would allow for such cooperation, enable incidents to be avoided and subsequently enable the experts to develop possible agreements for the consideration of the Forum. One such meeting was held in late 2010.

VII. Future status of the Territory

A. Position of the administering Power

34. In a statement in exercise of the right of reply before the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly on 6 October 2010, the Deputy Permanent Representative of the United Kingdom to the United Nations reiterated his Government's position.[2] As represented in the summary record, the Deputy Permanent Representative, inter alia, reaffirmed that the United Kingdom would never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their wishes, nor enter into a process of sovereignty negotiations with which Gibraltar was not content (A/C.4/65/SR.4).

35. Furthermore, the Deputy Permanent Representative indicated that the trilateral process of dialogue on Gibraltar between his Government and the Governments of Spain and Gibraltar continued to make progress. The positive atmosphere of the process and the real difference that the Córdoba agreements were making for people on both sides of the border underlined the value of three-way dialogue that was without prejudice to respective differences on sovereignty. His Government continued to enjoy very cordial relations with Spain and would continue to work constructively on all issues related to Gibraltar. The United Kingdom had no doubt about its sovereignty over Gibraltar and the territorial waters surrounding it, and was ready to consider any mechanism to advance negotiations that might find favour with the other two parties.

36. The Deputy Permanent Representative went on to say that the Gibraltar 2006 Constitution provided for a modern and mature relationship between Gibraltar and the United Kingdom, a description that would not apply to any relationship based on colonialism. As was well known, his Government regretted the outdated approach taken by the Special Committee on decolonization, as the criteria used for de-listing failed to recognize that the relationship between the United Kingdom and Gibraltar had been modernized in a way that was acceptable to both parties. The Deputy Permanent Representative concluded his statement by saying that his Government did not accept that the principle of territorial integrity had ever been applicable to the decolonization of Gibraltar, nor did it accept the assertion that the people of Gibraltar did not have the right of self-determination.

[2] See also the report of the Secretary-General, A/65/330, annex I.

B. Position of the territorial Government

37. On 6 October 2010, speaking to the Fourth Committee, the Chief Minister of Gibraltar stated that some countries, led by Spain, continued to put forward the "sterile" argument that the principles of the Declaration on the Granting of Independence to Colonial Countries and Peoples should be ignored and that the United Kingdom and Spain should engage in bilateral negotiations without taking into account the wishes of the people of Gibraltar. The Government of Spain claimed that the people protected by the Declaration were not the current inhabitants of Gibraltar, but the Spanish people (see A/C.4/65/SR.4).

38. The Chief Minister went on to say that the Territorial Government remained committed to the trilateral Forum for Dialogue on Gibraltar. It was also committed to reaching agreement with the Government of Spain on areas for cooperation. However, it would never make concessions to the latter's position on sovereignty, including sovereignty over its territorial waters, which the Government of Spain was disputing in flagrant violation of its legal obligations under the United Nations Convention on the Law of the Sea. Concluding, the Chief Minister said that the United Nations should recognize the rights of Gibraltar and remove it from the list of Non-Self-Governing Territories.

C. Position of the Government of Spain

39. On 6 October 2010, the Deputy Permanent Representative of Spain made a statement before the Fourth Committee noting that the General Assembly had repeatedly recognized in its decisions and resolutions that the colonial situation in Gibraltar was in violation of the Charter of the United Nations because it undermined the unity and territorial integrity of Spain. The principle of self-determination could not be applied to the decolonization of Gibraltar because the current inhabitants were not a colonized people but had been one of the main instruments used by the United Kingdom to dispossess the indigenous Spanish population.

40. The Deputy Permanent Representative went on to say that the United Nations had adopted decisions and resolutions every year since 1964 calling for bilateral negotiations between the Governments of the United Kingdom and Spain with a view to reaching a negotiated solution that took into account the interests of the inhabitants of the Territory. His Government once again affirmed its readiness to resume direct talks with the Government of the United Kingdom. The Deputy Permanent Representative concluded his statement by saying that his Government would continue to work within the Forum for Dialogue on Gibraltar with a view to resolving issues relating to local cooperation for the social welfare and economic development of the inhabitants of the Campo de Gibraltar and Gibraltar, which would have a clear impact on the well-being of the inhabitants.

41. In exercise of the right of reply to a statement made by the Government of the United Kingdom at the same Fourth Committee meeting, the Government of Spain stated that its position regarding the waters surrounding Gibraltar was unchanged: the Government of Spain recognized that the United Kingdom did not have rights over those maritime areas except those granted in article X of the Treaty of Utrecht (A/C.4/65/SR.4, see also the report of the Secretary-General A/65/330/Add.1).

D. United Kingdom-Spain negotiations

42. There were no bilateral negotiations on Gibraltar in 2009 within the framework of the Brussels Process, which is separate from the Forum for Dialogue on Gibraltar. In late 2010, the Minister for Foreign Affairs of Spain indicated her intention to generate the necessary confidence to renew bilateral sovereignty talks with the Government of the United Kingdom.

E. United Kingdom-Gibraltar discussions

43. The Governments of the United Kingdom and Gibraltar have both recognized that the 2006 Constitution provides for a modern and mature constitutional relationship between the two sides, one which is not based on colonialism.

44. As reflected in previous working papers, both the Government of the United Kingdom and the territorial Government believe that the de-listing and decolonization criteria of the United Nations are anachronistic, and at the same time, they recognize that under Article 73 *e* of the Charter of the United Nations, the United Kingdom is obliged to continue to submit annual reports until such time as the General Assembly votes in favour of the removal of a Territory from its list of Non-Self-Governing Territories.

VIII. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

45. A representative of Spain attended the Pacific regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism held in Nouméa, New Caledonia, from 18 to 20 May 2010, and made a statement.

46. The Special Committee, which discussed the question of Gibraltar on 15 June 2010, had before it the 2010 working paper prepared by the Secretariat concerning the Territory (A/AC.109/2010/16). As reflected in the summary record (A/AC.109/2010/SR.4), statements were made by the representative of Spain and by the leader of the opposition in Gibraltar. On the proposal of the Chair, the Committee decided to resume the consideration of the question at its next session and to transmit the relevant documentation to the General Assembly in order to facilitate the consideration of the question by the Fourth Committee.

B. Special Political and Decolonization Committee (Fourth Committee)

47. The Fourth Committee of the General Assembly considered the question of Gibraltar on 6 October 2010. As reflected in the summary record (A/C.4/65/SR.4), the Committee heard statements by the Chief Minister of Gibraltar, and a petitioner, Joseph Bossano, leader of the opposition. At the same meeting, statements were

made by the Deputy Permanent Representative of Spain and, in exercise of the right of reply, by the Deputy Permanent Representative of the United Kingdom, who referred to the statement made by the representative of Spain. At its 7th meeting, on 11 October 2010, the Fourth Committee adopted without a vote draft decision A/C.4/65/L.4 on the question of Gibraltar, which had been submitted by the Chair of the Decolonization Committee.

C. Action by the General Assembly

48. On 10 December 2010, the General Assembly, on the recommendation of the Fourth Committee, adopted without a vote decision 65/521 on the question of Gibraltar. The decision reads as follows:

> The General Assembly, recalling its decision 64/521 of 10 December 2009 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels, on 27 November 1984,[3] and in Madrid, on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite Forum for Dialogue on Gibraltar, separate from the Brussels Process, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004:
>
> (a) Urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the statement of 27 November 1984, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;
>
> (b) Welcomes the continuing success of the trilateral Forum for Dialogue and the shared commitment to make further progress in six additional areas of cooperation.

[3] See A/39/732, annex.